

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF NORTH CAROLINA  
STATESVILLE DIVISION  
5:06CV122-1-MU

JOSHUA MOORE,  
  
Plaintiff,  
  
v.  
  
CALDWELL COUNTY DETENTION CENTER,  
et al.,  
  
Defendants.

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**ORDER**

**THIS MATTER** comes before the Court for an initial review of Plaintiff's Complaint pursuant to 42 U.S.C. § 1983, filed October 6, 2005.

Plaintiff, an inmate at Caldwell County Detention Center, has filed a Complaint pursuant to 42 U.S.C. § 1983 alleging that his constitutional rights were violated when he was given a pair of flip flops that were too big and as a result he fell and broke his finger. Plaintiff further alleges that he received inadequate medical care.

Plaintiff names the Caldwell County Detention Center as the only defendant. In order to state a claim of municipal liability a Plaintiff must allege that his injury was caused by the execution of a municipal custom or policy. Monell v. Department of Social Services, 436 U.S. 658, 694 (1978). Plaintiff does not allege that he was given the wrong size flip flops or improper medical care pursuant to a custom or policy. Consequently, Plaintiff fails to state a claim against the Caldwell County Detention Center.

Moreover, the Court notes that regardless of who Plaintiff sues, his allegations fail to state

a claim. Plaintiff's allegation concerning the fact that he was given the wrong size flip flops simply does not rise to the level of a constitutional violation. Plaintiff's conclusory claim of deliberate indifference to a serious medical need appears to be at most a claim of medical negligence. See Estelle v. Gamble, 429 U.S. 97, 105-06 (1976)(mere malpractice or negligence in diagnosis or treatment does not state constitutional claim); Daniels v. Williams, 474 U.S. 327 (1986)(inadequate treatment due to negligence, inadvertence, or differences in judgment between an inmate and medical personnel does not rise to the level of a constitutional violation).

**IT IS THEREFORE ORDERED THAT Plaintiff's Complaint is DISMISSED.**

Signed: October 10, 2006

A handwritten signature in cursive script, reading "Graham C. Mullen", written over a horizontal line.

Graham C. Mullen  
United States District Judge

